

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

CHRISTOPHER SCOTT CHAPMAN,

Defendant and Appellant.

G055529

(Super. Ct. No. 15WF2575)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, David A. Hoffer, Judge. Affirmed in part, reversed in part, and remanded.

Paul R. Kraus, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Steve Oetting and Daniel J. Hilton, Deputy Attorneys General, for Plaintiff and Respondent.

*

*

*

In a previous appeal (*People v. Chapman* (Sept. 21, 2017, G053626) [nonpub. opn.] (*Chapman I*)), we concluded that defendant Christopher Scott Chapman's excess custody credits could be used to satisfy his outstanding fines, but not his fees. Chapman was subsequently found to have violated his probation and resentenced to prison. Once again, he asserts the trial court failed to apply his excess custody credits to reduce the amount of his fines and fees. The Attorney General concedes that Chapman is entitled to have his fines reduced, but not his fees, and we agree. We order the judgment modified accordingly.

I FACTS

We need not discuss the underlying facts. In June 2016, Chapman was convicted of residential burglary (Pen. Code, §§ 459, 460, subd. (a)(1)),¹ and two other offenses for criminal acts committed in 2015. He was sentenced to three years of supervised probation with one year of county jail time. He was awarded 376 days of total custody credits, and accordingly, his time was deemed served. Chapman was also ordered to pay a total of \$300 in fines (§ 1202.4, subd. (b)), and \$210 in fees (§ 1465.8; Gov. Code, § 70373, subd. (a)(1)). The court imposed a separate \$300 probation revocation fine (§ 1202.44), but ordered the fine stayed.

Chapman appealed, arguing that his excess custody time should have been credited toward his fines and fees. (*Chapman I, supra*, G053626.) Based on the language of section 2900.5, we agreed with respect to the fines, concluding that Chapman was entitled to a credit of \$30 per day. We disagreed with regard to the fees, finding that section 2900.5 addressed fines only. (*Ibid.*) Accordingly, we reversed and remanded

¹ All subsequent statutory references are to the Penal Code unless otherwise indicated.

with directions to enter a new judgment reflecting that the \$300 in fines had been satisfied by his excess custody credits. (*Ibid.*)

While the appeal in *Chapman I* was pending,² the trial court found that Chapman had violated probation and ordered his probation revoked. The court sentenced Chapman to a total of three years in state prison. Chapman was awarded 1,174 days of presentence custody credits.

With respect to fines, the court ordered reinstated the \$300 probation revocation fine (§ 1202.44) that had been stayed at the time of Chapman’s original sentence. It also imposed a \$300 restitution fine. (§ 1202.4, subd. (b).) The court further ordered Chapman to pay a total of \$210 in fees. (§ 1465.8; Gov. Code, § 70373, subd. (a)(1).)

II

DISCUSSION

Chapman contends that both his \$600 in fines and \$210 in fees should have been deemed satisfied due to his excess custody credits. As we did in *Chapman I*, we agree with him with respect to the fines, but disagree regarding the fees.

In 2015, section 2900.5 stated, as relevant here: “In all felony and misdemeanor convictions, either by plea or by verdict, when the defendant has been in custody . . . all days of custody of the defendant, . . . shall be credited upon his or her term of imprisonment, or credited to any fine, including, but not limited to, base fines, on a proportional basis, that may be imposed, at the rate of not less than thirty dollars (\$30) per day, or more, in the discretion of the court imposing the sentence. If the total number of days in custody exceeds the number of days of the term of imprisonment to be imposed, the entire term of imprisonment shall be deemed to have been served. In any

² The court found that Chapman had violated probation and sentenced him on August 4, 2017; our opinion in *Chapman I* was filed on September 21, 2017.

case where the court has imposed both a prison or jail term of imprisonment and a fine, any days to be credited to the defendant shall first be applied to the term of imprisonment imposed, and thereafter the remaining days, if any, shall be applied to the fine, including, but not limited to, base fines, on a proportional basis.” (Stats. 2014, ch. 612, § 5, eff. Jan. 1, 2015.)

As we concluded in *Chapman I*, this clear statutory language entitles Chapman to monetary credit for excess time served. At resentencing, the court imposed a three-year term, or 1,095 days in prison, and acknowledged that Chapman had 1,174 days of presentence custody credits. Accordingly, Chapman had 79 days of credit. He was, therefore, entitled to \$30 a day in credits, or \$2,370. (*Chapman I, supra*, G053626; Stats. 2014, ch. 612, § 5, eff. Jan. 1, 2015.) Thus, the \$300 restitution fine and the \$300 probation revocation fine the court imposed were entitled to be offset by this credit.

The court also imposed \$210 in fees. Chapman also claims he is entitled to a credit for these fees, but admits he advances the same argument that we expressly rejected the last time he appeared in this court. Our view of the issue has not changed, and under the doctrine of law of the case, this is a settled question in any event. (See *People v. Jurado* (2006) 38 Cal.4th 72, 94.)

As we stated in *Chapman I*: “The 2015 version of section 2900.5 specified excess custody credits could be used to satisfy *fines*, not fees, and the statute has never been intended to allow excess *punishment* credits to be applied to satisfy *nonpunitive* administrative assessments. [Citations.] [¶] Neither the trial court operations fee, nor the criminal conviction assessment fee imposed against Chapman in this case is denominated a fine, and neither operates as punishment. [Citations.] Consequently, section 2900.5 does not authorize the use of excess custody credits to satisfy those fees.” (*Chapman I, supra*, G053626.)

III

DISPOSITION

The judgment is reversed and the case remanded for the trial court to enter a new judgment reflecting that Chapman's \$300 probation revocation fine (§1202.44), and \$300 restitution fine (§ 1202.4, subd. (b)) were deemed satisfied by application of his excess custody credits. In all other respects, the judgment is affirmed.

MOORE, ACTING P. J.

WE CONCUR:

ARONSON, J.

FYBEL, J.